

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEITH KREBSBACH,

Defendant.

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CASE NO. 8:11CR402

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”), the government’s objections thereto (Filing No. 79), and the Defendant’s motion for downward departure (Filing No. 78). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The government objects to the drug quantity and base offense level set out in ¶ 36 of the PSR. The Court intends to honor the plea agreement which states the drug quantity is at least 5 but less than 20 grams actual methamphetamine, resulting in base offense level 26. Therefore, the objection is granted.

The government also points out that in the plea agreement the Defendant waived his right to file motions for downward departure or adjustment. Therefore, the Defendant’s motion for downward departure will be denied.

IT IS ORDERED:

1. The government’s objection to ¶ 36 of the PSR (Filing No. 79) is granted;
2. The Defendant’s motion for downward departure (Filing No. 78) is denied;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 2nd day of July, 2012.

BY THE COURT:

S/ Laurie Smith Camp
Chief United States District Judge